

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES JOSEPH FAIN,  
and CATHERINE S. COOLEY,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent,

Case No. C04-5762JET  
CR01-5120JET

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendants' Motions for Release Pending Appeal.

Having considered the entirety of the record and files herein, the Court finds and rules as follows:

Defendants Charles Fain and Catherine Cooley seek release pending determination of

1 their 2255 petitions.<sup>1</sup>

2 Defendants cite The Bail Reform Act, 18 U.S.C. §3143(b) as the appropriate standard  
3 governing release pending a ruling on their 2255 petitions. However, the Bail Reform Act has been  
4 held not to apply to federal prisoners seeking post conviction relief. United States v. Mett, 41 F.3d  
5 1281 (9<sup>th</sup> Cir. 1995). Rather, Fed.R.App. P. 23 and 9<sup>th</sup> Cir. R. 23-1 govern the release or detention  
6 of prisoners collaterally attacking their convictions. Mett, 41 F.3d at 1282.

7 Release under Fed.R.App.P. 23 entitles prisoners to release only upon a showing of special or  
8 exceptional circumstances, or a high probability of success. Id. Nonetheless, Defendants' motions  
9 fail under either standard.

10 Accordingly, Defendants' motions are DENIED.

11 The Clerk of the Court is directed to send uncertified copies of this order to all counsel of  
12 record.

13 DATED this 9th Day of May, 2005.

14  
15 /s Jack E. Tanner

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17 JACK E. TANNER  
18 SR. UNITED STATES DISTRICT JUDGE  
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26 <sup>1</sup> Fain's petition is filed in CR01-5120. Cooley's petition is filed in C04-5762.